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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Gary Stephen Shuster

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06/05/2006

CONNOLLY BOVE LODGE & HUTZ LLP  
P.O. BOX 2207  
WILMINGTON, DE 19899

EXAMINER

CHOUDHURY, AZIZUL Q

ART UNIT

PAPER NUMBER

2145

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/837,319	SHUSTER, GARY STEPHEN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Azizul Choudhury	2145	

→ The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2006.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 April 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Detailed Action***

This office action is in response to the correspondence received on March 4, 2006.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-2 and 11-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

- Claims 1 and 11 contain the phrase: "substantially less than a total..."
- Claims 1 and 11 contain the phrase: " progressively increasing amounts"
- Claims 2 and 12 contain the phrase: "ever-increasing"

The terms within the phrases listed above are considered broad and indefinite.

Appropriate corrections are required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by

Kalkunte et al (US Pat No: 5,854,900), hereafter referred to as Kalkunte.

1. With regards to claim 1, Kalkunte teaches a method for operating a network server to discourage use that disproportionately depletes server resources such as distribution of large media files, wherein the server is connected to a plurality of client devices, and configured to transfer information between selected ones of the client devices and a memory for static storage of information, said method comprising the steps of:
  - receiving a request to transfer a file between the memory and one of the plurality of client devices (It is inherent that a request initiates the data transfer process within networked computers (column 2, lines 60-64, Kalkunte));
  - removing a packet of information from the file after said receiving step, the packet of information comprising a defined number of information bits substantially less than a total number of information bits in the file (column 4, lines 54-57, Kalkunte);
  - transferring the packet of information from the memory to a lower-level network component operative to configure the packet as at least one lower-level packet according to a protocol of a packet-switched network for transmission to the one of the plurality of client devices after said removing step (column 4, lines 49-57, Kalkunte);
  - pausing for a defined delay period after at least one of said removing and said transferring steps (column 3, lines 19-21, Kalkunte); and

- repeating said removing step, said transferring step, and said pausing step in any operative order until all of the file has been transferred to the lower-level network component, wherein at least one of the delay period and the defined number of information bits in the information packet is controlled so as to cause later-transferred portions of the file to be delayed by progressively increasing amounts (column 3, lines 9-61, Kalkunte).
2. With regards to claims 2 and 12, Kalkunte teaches further comprising increasing the defined delay period to define an ever-increasing delay period during the repeating step (Kalkunte's design allows for delay periods, including defined delay periods and a calculator to determine adjusted delay periods (column 3, lines 9-61, Kalkunte)).
  3. With regards to claims 3 and 13, Kalkunte teaches further comprising setting the defined delay period to a selected predetermined value after each execution of said pausing step (Kalkunte's design allows for delays to be set to a predetermined value (column 3, line 20, Kalkunte)).
  4. With regards to claims 4 and 14, Kalkunte teaches further comprising initializing the defined delay period to a calculated value prior to said removing step (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61,

Kalkunte). No limitation is placed within the design as to where the delay must occur, it simply must occur so that the packet is delayed in its transmission).

5. With regards to claims 5 and 15, Kalkunte teaches further comprising initializing the defined delay period to a selected predetermined value prior to said removing step (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). No limitation is placed within the design as to where the delay must occur, it simply must occur so that the packet is delayed in its transmission).
6. With regards to claims 6 and 16, Kalkunte teaches further comprising setting the defined delay period to a calculated value after each execution of said pausing step (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). No limitation is placed within the design as to where the delay must occur, it simply must occur so that the packet is delayed in its transmission).
7. With regards to claims 7 and 17, Kalkunte teaches further comprising determining the calculated value from the file size or file type (Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network

factors, as claimed. Plus, Kalkunte's design takes the file size (column 4, lines 61-63, Kalkunte). Such size information must be used in the calculation of delays to prevent too many packets (larger the size, the more packets) from being needlessly sent out in a crowded network path. No limitation is placed within the design as to where the delay must occur, it simply must occur so that the packet is delayed in its transmission).

8. With regards to claims 8 and 18, Kalkunte teaches further comprising setting the defined number of information bits in the packet of information to a calculated value after each execution of said pausing step (Kalkunte's design allows for network data transfer using packets. Networks allow the size of the packets to be set as claimed. Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network factors, such as packet size, as claimed. No limitation is placed as to where the delay must occur, it simply must occur so that the packet is delayed in its transmission).

9. With regards to claims 9 and 19, Kalkunte teaches further comprising setting the defined number of information bits in the packet of information to a selected predetermined value after each execution of said pausing step (Kalkunte's design allows for network data transfer using packets. Networks allow the size of

the packets to be set as claimed. Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network factors, such as packet size, as claimed. No limitation is placed as to where the delay must occur, it simply must occur so that the packet is delayed in its transmission).

10. With regards to claims 10 and 20, Kalkunte teaches further comprising initializing the defined number of information bits in the packet of information prior to said removing step (Kalkunte's design allows for network data transfer using packets. Networks allow the size of the packets to be set as claimed. Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network factors, such as packet size, as claimed. No limitation is placed as to where the delay must occur, it simply must occur so that the packet is delayed in its transmission).

11. With regards to claim 11, Kalkunte teaches a system for discouraging use of memory connected to a network where the use, such as distribution of large media files, disproportionately depletes server resources, the system comprising:

- a memory for static storage of information (column 4, line 40, Kalkunte);



- a server connected to a plurality of client devices and to the memory, the server controlling access by the client devices to the memory (Inherently present within a multimode network (column 3, lines 1-4, Kalkunte)); and
- an application on the server for transferring information between selected ones of the client devices and the memory, the application comprising instructions (inherently present within a network computer (column 4, lines 28-38, Kalkunte)) to perform the steps of:
  - receiving a request to transfer a file between the memory and one of the plurality of client devices (It is inherent that a request initiates the data transfer process within networked computers (column 2, lines 60-64, Kalkunte));
  - removing a packet of information from the file after the receiving step, the packet of information comprising a defined number of information bits substantially less than a total number of information bits in the file (column 4, lines 54-57, Kalkunte);
  - transferring the packet of information from the memory to a lower-level network component operative to configure the packet as at least one lower-level packet according to a protocol of a packet-switched network for transmission to the one of the plurality of client devices after the removing step (column 4, lines 49-57, Kalkunte);
  - pausing for a defined delay period after one of the removing and the transferring steps (column 3, lines 19-21, Kalkunte); and

- repeating the removing step, the transferring step, and the pausing step in any operative order until all of the file has been transferred to the lower-level network component, wherein at least one of the delay period and the defined number of information bits in the information packet is controlled so as to cause later-transferred portions of the file to be delayed by progressively increasing amounts (column 3, lines 9-61, Kalkunte).

### ***Response to Remarks***

The amendment received on March 4, 2006 has been carefully examined but is not deemed fully persuasive. The following are the examiner's response to the remarks submitted within the amendment.

The first point of contention remarked upon by the applicant involves the packet being transferred from memory which belongs to the server. First, the examiner would like to make it clear that any network computer is capable of being a client and a server. If a computer is serving a request, it is the server in that network. Second, Kalkunte teaches how the computers feature direct memory access buffers (column 4, line 40, Kalkunte). The data is transferred byte-by-byte to the FIFO (which is a buffer which is also a memory) and hence the packets are created within a memory before being sent out (column 4, lines 49-63, Kalkunte).

The second point of contention remarked upon by the applicant involves increasing delay intervals or reducing packet size. The examiner disagrees with this

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assumption. Kalkunte teaches how the delay intervals are adjustable based on traffic and delays can be increased (column 3, lines 30-50, Kalkunte). As for changing packet sizes, this trait exists within designs that are capable of abiding within TCP/IP protocols, and Kalkunte's design is one such example (column 9, lines 38-44, Kalkunte).

The final point of contention involves calculating delay from size or type. Kalkunte's design allows for network data transfer using packets. Networks allow the size of the packets to be set as claimed. Kalkunte's design allows for the delay value to be set (column 3, lines 9-61, Kalkunte). This includes setting the delay to a calculated value (column 3, lines 45-61, Kalkunte). Kalkunte's design also allows the calculations to be formulated using network factors, such as packet size, as claimed.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Azizul Choudhury whose telephone number is (571) 272-3909. The examiner can normally be reached on M-F:

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on (571) 272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AC



**JASON CARDONE**  
**SUPERVISORY PATENT EXAMINER**